

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CRISTAL GRICE,

Plaintiff,

v.

KEYSTONE RV COMPANY,

Defendant.

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CAUSE NO. 3:07-CV-487 TLS

OPINION AND ORDER

On November 18, 2008, the parties submitted a Joint Protective Order, requesting that this Court issue a protective order covering various information in the underlying litigation. For the following reasons, this Court **DENIES WITHOUT PREJUDICE** the parties' motion for a protective order. [Doc. No. 18]. The parties may resubmit a proposed protective order which comports with Seventh Circuit precedent for this Court's consideration.

I. APPLICABLE STANDARDS

When granting a proposed protective order, this Court must independently determine whether "good cause" exists to seal the requested information from the public record. Fed. R. Civ. P. 26(c); Citizens First National Bank of Princeton v. Cincinnati Insurance Co., 178 F.3d 943, 944 (7th Cir.1999). In doing so, this Court must not grant parties *carte blanche* to seal or protect whatever they desire. Citizens, 178 F.3d at 944; See also Pierson v. Indianapolis Power & Light Co., 205 F.R.D. 646, 647 (S.D. Ind. 2002) ("Independent and careful evaluations of protective orders are especially important because '[t]he judge is the primary representative of the public interest in the judicial process....'" (quoting Citizens, 178 F.3d at 945)). In other words, this Court cannot serve as a rubber stamp whenever parties wish to seal public records, but must review all requests to seal documents in light of the public interest in the judicial process. Citizens, 178 F.3d at

945 (citing In re Krynicki, 983 F.2d 74 (7th Cir.1992); Miller, Arthur M., Confidentiality, Protective Orders, and Public Access to the Courts, 105 Harv. L.Rev. 427, 492 (1991)).

When reviewing an agreed protective order seeking to seal documents produced in discovery, this Court must ensure that “(1) the information sought to be protected falls within a legitimate category of confidential information, (2) the information or category sought to be protected is properly described or demarcated, (3) the parties know the defining elements of the applicable category of confidentiality and will act in good faith in deciding which information qualifies thereunder, and (4) the protective order explicitly allows any party and any interested member of the public to challenge the sealing of particular documents.” Pierson, 205 F.R.D. at 647 (citing Citizens, 178 F.3d at 946). This Court may issue a protective order in this case pursuant to its referral order and 28 U.S.C. § 636(b)(1)(A).

II. ANALYSIS

The parties’ proposed order satisfies each prong of the above standard but improperly places the burden of challenging a designation of confidentiality. The parties’ proposed order states, “[i]n the event of such [challenge] the receiving party shall have the burden of establishing the need for relief from this Order in the preparation or conduct of its case.” See Doc. No. 18-2 at 3. However, the law is clear that the burden for establishing that a document is confidential rests with the designating party. See Culinary Foods, Inc., v. Raychem Corp., 151 F.R.D. 297, 306 (N.D. Ill. 1993) (citing Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3rd Cir. 1986).

III. CONCLUSION

Because the parties proposed protective order attempts to impermissibly shift the burden of proof, this Court **DENIES WITHOUT PREJUDICE** the parties' motion for a protective order [Doc. No. 18]. The parties may resubmit their proposed order in light of the standards set forth in this order and the citations herein.

SO ORDERED.

Dated this 19th Day of November, 2008.

S/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge